

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7623

Application of New Cingular Wireless PCS, LLC, d/b/a )  
AT&T Mobility, for authority, pursuant to )  
30 V.S.A. § 248a, to upgrade wireless communications )  
facilities on and at existing communications towers in )  
Brandon, Chester, Danville, Lincoln, Quechee, )  
Somerset, St. George, Waterford and Woodstock, )  
Vermont, as part of its Universal Mobile )  
Telecommunications Service upgrade )

Order entered: 7/8/2010

**I. INTRODUCTION**

In this Order, the Vermont Public Service Board ("Board") approves the petition filed on April 30, 2010, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Order implementing standards and procedures under this section ("Procedures Order"),<sup>1</sup> and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of communications facilities located in the Towns of Brandon, Chester, Danville, Lincoln, Quechee, Somerset, St. George, Waterford and Woodstock, Vermont (the "Project"), as part of Petitioner's Universal Mobile Telecommunications Service upgrade.

**II. BACKGROUND**

This case involves a petition and prefiled testimony filed by the Petitioner on April 30, 2010, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the Project. Prior to filing the petition, AT&T provided the required 45-days' advance notice to the entities and individuals specified in the Procedures Order and 30 V.S.A. § 248a(e).

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1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*; Order issued August 14, 2009 ("Procedures Order").

On May 19, 2010, the Board received comments regarding the proposed installation of facilities at the St. George site from the Mount Pritchard Landowners Association, Connie Kendall and Don Taub, adjoining landowners, and the St. George Development Review Board ("DRB").<sup>2</sup> The DRB, and Connie Kendall and Don Taub, also filed motions to intervene in this proceeding.<sup>3</sup> On May 20, 2010, Cathy Neff and Michael Garvey, neighboring landowners, filed comments regarding the St. George site.

No comments regarding the other nine sites included in the Project have been filed with the Board.

On June 7, 2010, AT&T filed a response to the comments and motions to intervene with the Board. AT&T also filed a motion to supplement its petition with revised exhibits JP-11-7H(1) and 7H(2), and a motion to bifurcate proceedings to allow consideration of the St. George site to be treated as a separate proceeding from that of the other sites included in the petition.<sup>4</sup>

The Board has determined that the petition and prefiled testimony have effectively addressed the issues raised with respect to the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings or further proceedings are required.

### **III. FINDINGS**

1. The Project is part of AT&T's Universal Mobile Telecommunications Service ("UMTS") upgrade that involves the installation and modification of wireless telecommunications services in Vermont. The ultimate objective of the project is to upgrade

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2. The Mount Pritchard Landowners Association consists of four members, including Connie Kendall, that reside on Mount Pritchard Lane in St. George and maintain Mt. Pritchard Lane which serves as the access road to the tower site.

3. The letter filed by the Mount Pritchard Landowners Association is entitled "Motion to Intervene." However, the letter does not make a formal request to intervene in the proceeding or state any basis for intervention. Therefore, we will treat the letter as public comments on the petition. To the extent that the letter is intended as a formal request to intervene, it is denied for failing to provide sufficient information. *See* Board Rule 2.209.

4. Because we have approved the petition as a whole, there is no reason to bifurcate this proceeding and AT&T's motion is, therefore, moot. AT&T's motion to file supplemental information in this proceeding is hereby granted.

AT&T's Vermont network to provide 3G wireless technologies for simultaneous circuit-switched voice and packet-switched data communications. Joint Panel pf. at 3-5, 14.

2. Each of the upgrades involves material changes being made to wireless telecommunications facilities that AT&T acquired from RCC Atlantic, Inc., d/b/a UniceL, and Rural Newco LLC, d/b/a Verizon Wireless (collectively "RCC"), in order to integrate those facilities into AT&T's network. Joint Panel pf. at 4.

3. The Project will allow interconnection with the other similar AT&T facilities comprising AT&T's Vermont network, some of which have already been upgraded and others that are slated for improvements. AT&T needs to add antennas to maximize performance of the facilities at some sites. Joint Panel pf. at 14.

4. The Project facilities are proposed to be located at the following sites: (1) Brandon, Site No. VT6507, 1045 Birch Hill Road, Brandon, Vermont; (2) Brandon, Site No. VT6517, Mulcahy Drive, Brandon, Vermont; (3) Chester, Site No. VT6409, 211 Lovers Lane, Chester, Vermont; (4) Danville, Site No. VT6488, 428 Swett Road, Danville, Vermont; (5) Lincoln, Site No. VT6515, 767 Browns Road, Lincoln, Vermont; (6) Quechee, Site No. VT6520, 1030 Bliss Road, Quechee, Vermont; (7) Somerset, Site No. VT6427, 39 Mt. Snow Road, Somerset, Vermont; (8) St. George, Site No. VT6447, 580 Mt. Pritchard Road, St. George, Vermont; (9) Waterford, Site No. VT6525, 820 Higgins Hill Road, Waterford, Vermont; and (10) Woodstock, Site No. VT6415, 893 Larry Curtis Road, Woodstock, Vermont. Joint Panel pf. at 3-4.

5. The Project involves the addition and/or reconfiguration of antennas on existing towers at each of the ten Project sites. The Project will also involve the addition of operating equipment within existing shelters and equipment rooms. The proposed Project will not increase the height or width of any of the existing structures by more than twenty feet and will involve only temporary earth disturbance associated with Project installation at the existing sites. Joint Panel pf. at 5, 13-14.

6. The proposed improvements at the St. George site involve the removal and replacement of four existing panel antennas, at an approximate height of 120 feet, with six panel antennas, at an approximate height of 112 feet on the existing 124-foot-tall steel lattice tower. Each of the

antennas measures 4.5 feet high x 10.3 inches wide x 5.9 inches deep. Revised Exhs. JP-11-7H(1) and 7H(2).

7. The existing support structures involved in the Project are capable of accommodating the new facilities provided the recommendations specified in structural reports developed for each site are followed. Joint Panel pf. at 16-17.

8. The existing tower at the St. George site is capable of supporting the existing and proposed additional antennas. Exh. JP-11-6 at 2.

9. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 10 and 11, below.

10. The proposed co-location of facilities will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing telecommunications tower and equipment located at each site. Joint Panel pf. at 13, 18-19.

11. There are no rare or irreplaceable natural areas or historic sites within the vicinity of the existing telecommunications tower sites where the Project will be located. Joint Panel pf. at 19-21.

#### **IV. DISCUSSION & CONCLUSION**

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Subsection 248a(j)(1) further provides that:

the board may . . . issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision . . . if the board finds that such facilities will be of limited size and

scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section.

Pursuant to § 248a(j)(1), the Procedures Order defines a Project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope":

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing . . . .

Each of the communications facilities included as part of the proposed Project will consist of an attachment to an existing structure that does not increase the height or width of that structure by more than twenty feet and will involve only temporary earth disturbance associated with Project installation at the existing sites.<sup>5</sup> Therefore, all of the facilities qualify as facilities of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

The comments filed by the DRB, Connie Kendall and Don Taub, and Cathy Neff and Michael Garvey all express concerns regarding the structural capacity of the existing telecommunications tower at the St. George site with respect to the proposed additional antennas. The Mount Pritchard Landowners Association and Kendall and Taub also express concerns regarding the impacts of the proposed construction on Mount Pritchard Lane which serves as the access road to the tower site. In addition, the DRB and Kendall and Taub express concerns

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5. Joint Panel pf. at 13-14.

regarding potential aesthetic impacts of the two additional antennas on the St. George tower. None of the commenters have requested a hearing in this matter. Both Kendall and Taub and the DRB also cite to language from the St. George Town Plan which states that "the physical and aesthetic environmental impact of the existing tower shall not be increased in any way and should be reduced over time by way of new technology."<sup>6</sup>

In its response to the comments, AT&T argues that concerns expressed regarding the St. George tower are unfounded. AT&T points out that the 2010 structural report submitted as part of the petition states that the "the stress on the Tower's legs will be reduced to 76%, and the stress on the Tower's diagonal braces will be reduced to 94%" following removal of the existing four antennas and addition of the six new antennas.<sup>7</sup> AT&T also contends that the proposed upgrade will not cause any additional aesthetic impacts. AT&T asserts that the aesthetic impact resulting from the removal of the four existing antennas and the addition of the six new antennas at a lower height on the tower "will be reduced or identical to the present Tower configuration."<sup>8</sup> AT&T contends that the proposed upgrade is consistent with the Town Plan language regarding aesthetics because the upgrade does not represent a meaningful increase in the aesthetic impact of the tower. With respect to concerns regarding impacts to Mt. Pritchard Lane, AT&T notes that the Mount Pritchard Landowners Association's "interests are already governed by the Road Maintenance Agreement" between RCC Atlantic, Inc. and the landowners association.<sup>9</sup> Therefore, AT&T argues that concerns regarding impacts to the road are "already covered through an enforceable agreement."

AT&T also opposes granting intervention to the DRB and Kendall and Taub, on the grounds that the concerns raised regarding structural and aesthetic impacts of the Project could have been addressed during the 45-day notice period and, therefore, granting intervention at this

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6. Kendall and Taub comments at 2; DRB Comments at 1-2.

7. AT&T's Opposition to DRB Motion to Intervene at 9-10 (emph. in original).

8. *Id.* at 10-11.

9. AT&T has supplied a copy of the agreement with its response and observes that the maintenance agreement remains in effect and that it has paid the annual license fee since it acquired the St. George facility from RCC Atlantic, Inc.

stage would represent undue delay. Further, AT&T contends that the movants have failed to demonstrate a substantial interest that will not be adequately protected by other parties.

Based on the information provided by AT&T as part of its petition, and the supplemental information provided in its response, we conclude that AT&T has adequately addressed the concerns expressed by the commenters and that the Project does not raise a significant issue with respect to the applicable criteria. The upgrade of the St. George facilities involves the replacement of four existing antennas with six new antennas. Thus, the Project will result in two additional antennas being added to the existing tower. The new antennas, however, will be placed at a lower elevation on the tower, thereby reducing any impacts resulting from the two additional antennas. The additional antennas will be difficult to discern by the average viewer given the overall context of the telecommunications facility, and the lower antenna elevation will result in reduced structural stress on the tower. Therefore, we conclude that the proposed upgrade will not raise significant issues with respect to aesthetics or tower safety and will be consistent with the Town Plan provision regarding increases in aesthetic impacts.

We also conclude that the concerns regarding road maintenance are adequately addressed by the existing road maintenance agreement between the Mount Pritchard Landowners Association and AT&T. Any disputes that arise concerning road usage between AT&T and the landowners association are governed by the mechanisms specified in that agreement and should be brought before a court of competent jurisdiction.

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.<sup>10</sup>

With respect to the DRB's motion to intervene, we conclude that the town should be granted permissive intervention regarding the concerns expressed in their motion regarding

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10. We have specifically rejected a proposed finding submitted by AT&T related to the general good that relied on the testimony of AT&T witness Robert Donovan previously submitted in a different Docket, because the Board's findings must be based on the evidence in the current proceeding. 3 V.S.A. § 809(g). In any future filings related to the UMTS upgrade, AT&T should include all testimony upon which it relies, rather than referring to testimony provided in an earlier proceeding.

aesthetics and safety. The DRB, as an entity involved in community planning and development, necessarily has an interest in projects that could potentially impact the residents of the town. We also conclude that granting intervention at this point in this proceeding will not cause undue delay. Pursuant to Section K of the Board's Procedures Order persons wishing to submit comments or request a hearing with regard to a petition are required to do so within 21 days of the petition being filed with the Board. In this case, the DRB's comments and motion for intervention were filed within the 21-day period and are consistent with the timeline for intervention contemplated in the Procedures Order. The DRB, as a town entity, has adequately demonstrated a specific interest in the issues described in its motion, and that interest is unlikely to be adequately represented by other parties in this case. Therefore, we grant the DRB permissive intervention regarding the issues described in its motion.

With respect to the Motion to Intervene filed by Connie Kendall and Don Taub, we conclude that the motion should be denied. Kendall and Taub raise general concerns regarding the structural capacity of the tower and aesthetic impacts of the project. However, other than stating that their home is located 1,000 feet from the existing tower site, Kendall and Taub have not explained the specific impact the proposed Project would have on them or their property. As AT&T notes in its response to the motion, Kendall and Taub "have not explained the manner in which the addition of AT&T's two extra antennas impacts them beyond the impact to the general public from a minor change on the existing tower."<sup>11</sup> Kendall and Taub have also not explained why their interests in this matter would not be adequately protected by other entities, including the DRB which has raised similar issues in its comments. In addition, Kendall and Taub have not explained why the Road Maintenance Agreement does not sufficiently address their expressed concerns regarding road maintenance. Therefore, the Kendall and Taub motion to intervene is denied.

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11. AT&T Opposition to Mount Pritchard Landowners Association and Adjoining Neighbor Intervention and Memorandum in Support, at 9-10.



**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the locations specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 8th day of July, 2010.

<u>s/ James Volz</u>	)	
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	)	PUBLIC SERVICE
<u>s/ David C. Coen</u>	)	
	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: July 8, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*